



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| | | | | |
|---|-------------|----------------------|---------------------|------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/522,045 | 01/19/2005 | Masashi Okamoto | 10873.1576USWO | 4002 |
| 52835 | 7590 | 01/18/2008 | EXAMINER | |
| HAMRE, SCHUMANN, MUELLER & LARSON, P.C. | | | SHAW, AMANDA MARIE | |
| P.O. BOX 2902 | | | ART UNIT | PAPER NUMBER |
| MINNEAPOLIS, MN 55402-0902 | | | 1634 | |
| MAIL DATE | | DELIVERY MODE | | |
| 01/18/2008 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | |
|---|----------------------------|------------------|
| Advisory Action Before the Filing of an Appeal Brief | Application No. | Applicant(s) |
| | 10/522,045 | OKAMOTO ET AL. |
| | Examiner Amanda M. Shaw | Art Unit 1634 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) They raise the issue of new matter (see NOTE below);
- (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

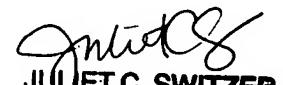
10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. Other: See Continuation Sheet.


JULIET C. SWITZER
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: In the response filed on December 19, 2007, the Applicants traversed the rejection made under 35 USC 103(a) over Sato in view of Calomiris. In the response, the Applicants first reiterate what is taught by Sato (the primary reference) and Calomiris (the secondary reference). Next the Applicants argue that the separation method of Calomiris involves centrifuging a tube containing a solution that is filled from the bottom up, and as such does not involve centrifuging a tube having a filter that divides the inner space of the tube into an upper part and a lower part as required by claim 1. This argument has been fully considered but is not found persuasive. Specifically Calomiris teaches a method where a sample is centrifuged through a separation column (See claim 1). In the instant case the separation column is being interpreted as a filter because it is porous and can be used to separate microorganisms from a liquid sample. Thus Calomiris does in fact teach a centrifugation tube with a filter. The filter inherently would divide the tube into an upper part and a lower part. Next the Applicants argue that there is no teaching or suggestion in the reference of a method that utilizes a centrifuge tube having water absorbing resin particles disposed on the filter. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case the combination of Sato and Calomiris teach all of the claimed limitations. Specifically Sato teaches a method of bringing a liquid sample containing virus particles into contact with hydrogel particles which absorb water wherein the virus particles are caught on the surface of the hydrogel beads. Sato additionally teaches pouring a salt solution on the virus bound particles in order to disassociate viruses from the hydrogel particles. Sato also teaches a step of centrifugation. While Sato does not teach a centrifugation tube with a filter that divides the centrifugation tube into an upper and lower part, this is taught by Calomiris. Thus all of the claimed limitations are taught. The Applicants also state that it is questionable whether Sato and Calomiris would produce an operative combination. However the Applicants do not state any reasons why they believe it is questionable. Further these are at best opinions which cannot take the place of evidence on the record. Thus these arguments are not persuasive and the rejections made over Sato in view of Calomiris are maintained.

The Applicants also traversed the rejections made over Sato in view of Calomiris and in further view of Wardlaw, the rejections made over Sato in view of Calomiris and in further view of Britschgi, and the rejections made over Sato in view of Calomiris and in further view of Krupey. Basically the Applicants argue that these references do not cure the deficiencies of Sato in view of Calomiris. However as discussed above, the rejection over Sato in view of Calomiris is maintained.

Continuation of 13. Other: It is further noted that the Interview record is incomplete because the Applicants have failed to provide a complete and accurate summary of the substance of the interview held on December 5, 2007. See MPEP 713.04.